

MINUTES
CITY OF GUNNISON
ZONING BOARD OF ADJUSTMENTS AND APPEALS
REGULAR MEETING
APRIL 21, 2004

MEMBERS

PRESENT/ABSENT

JUDY KLINKER, CHAIRPERSON	X
CARL PICKETT, VICE CHAIR	X
MARIAN HICKS	X
WES BAILEY	X
MARLA LARSON	X

OTHERS PRESENT: PLANNING TECHNICIAN KIM ANTONUCCI, CITY ATTORNEY ROD LANDWEHR, STAFF MEMBER SONJA BACA, LORI CLEMENT, CHARLES PUSEY, CARL REINMAN, AND OTHER INTERESTED CITIZENS.

I. CALL TO ORDER BY VICE CHAIR – 7:10 P.M.

II. CONSIDERATION OF MINUTES

A. FEBRUARY 19, 2004

Commissioner Bailey moved to accept minutes.

Commissioner Hicks seconded.

Roll call vote yes: Hicks, Bailey, Larson, and Pickett.

Roll call vote no: None. Motion carried.

III. CHARLES PUSEY, VA 04-1

A. OPEN PUBLIC HEARING

Hearing was opened at 7:12 P.M.

B. PROOF OF PUBLICATION – Provided by Gunnison Country Times.

C. REVIEW OF APPLICATION & STAFF REPORT

Planning Technician Kim Antonucci began the review of the staff report and staff member Sonja Baca continued the staff report dated April 13, 2004. Antonucci reviewed the variance application VA 04-1, a request for a variance to increase uncovered parking in the Industrial zone by 6.7%. The applicants are Charles and Josephine Pusey. She then reviewed the variance process.

Baca reviewed the department comments. Public Works was concerned that unrestricted access to the storage units will potentially cause gravel migration onto the paved street from the unfinished right-of-way and snow removal on the property will push snow to the edge. The fire department had concerns if the building is built to the property line, there can be no eave overhang on the roof. The Police Department had concerns associated with accessing the storage units on the alley side. A five foot access between the building and the alley is not wide enough for a vehicle to park and allow emergency access to the units or other properties to the east. Other problems may exist for garbage pick-up and snow plowing of the alley. If the alley is plowed, it may deny access to the storage units themselves.

Based on the staff's observations and the findings which demonstrate the inability of the applicant to meet all of the seven criteria under Required Showing, staff recommends denial of the application.

D. APPLICANT'S PRESENTATION

Charles Pusey stated that the Staff Report goes beyond what his variance asks for. He addressed some of the department's concerns. There will be an eave overhang, he is using a shed roof and the roof overhang is 5 inches and the building can be 5 inches shorter. The snow plow can use the allocated non living landscape area for snow storage and it is far and in access as required by the code. As far as parking in the alley he is allowed 2 spaces for the project and the average stay for a client is 17 minutes. If an emergency vehicle needs access the client can move their vehicle. The snow plow can plow to the vacant lot on the east side of the alley.

The major issue is to ask for the 6.7% extra parking and access. He is fully complying with the landscape and the building foot print. If he didn't have the fire code to contend with the 20 foot requirement between buildings he would have no problem. He is in a catch 22 and doesn't know what else to do. Mr. Pusey stated that down on S. 10th Street everyone is using more parking access and nobody will notice the 6.7% increase.

Chair Klinker arrives at 7:35 P.M.

Mr. Pusey stated that he is doing all he can to comply and he has total support of adjoining neighbors and they want the project.

Vice Chair Pickett asked which way the shed roof will be sloping. Pusey stated that he put the buildings in a North/South row so the sun will heat up the snow from all directions. The ends of the buildings won't have sun. All the driveways will have the sun. The snow will shed from the west building to the West, the middle building will shed to the West as well, and the east building will shed to the East.

Vice Chair Pickett thanked Mr. Pusey.

E. PUBLIC INPUT

Chair Klinker apologizes for being late. There is no public input.

F. BOARD DISCUSSION

Board member Hicks wanted to know the width of buildings. Mr. Pusey explained the site plan. Hicks asked if he thought of making the buildings narrower. Mr. Pusey said it would make the drives bigger and increases the driving and access and therefore the 20 foot drive is necessary. Attorney Landwehr stated if you put the buildings the other way you can reduce the size of the driveway because the fire width only kicks in at a certain length. Mr. Pusey stated it would create other problems. Mr. Pusey is worried about ice if the buildings are placed the other way. Chair Klinker stated that Mr. Pusey mentioned that the Harris's are not opposed to it but it could be an issue in the future, if they were not to live there anymore.

Mr. Pusey stated that there are no negative affects of the storage units unlike construction which causes dust and the noise of running motors. Vice Chair Pickett asked if the right-of-way was currently graveled. Mr. Pusey said it was dirt just now but will be graveled with the correct drainage plan. Board member Bailey voiced his concerns that the variance is not consistent with the land development code and it is a new structure. Bailey is concerned that the variance could cause precedence for other owners. Mr. Pusey acknowledged Bailey's concerns and said that this is why the Board exists to allow variances that deviate from the absolutes.

Chair Klinker asked Attorney Landwehr if this is the same situation with Mr. Pusey's last variance request. Attorney Landwehr said that the Board has to make a finding that each of the criteria are met.

Board member Larson thanked Mr. Pusey for coming into compliance with the landscaping. Larson still feels that the Board's hands are tied and suggests that Mr. Pusey gets the issues that were brought up settled with City Staff. Mr. Pusey expressed his amazement that things keep popping up again such as the snow removal, etc. because it is basically the same project. Vice Chair Pickett mentioned that there may be another code issue with the placement of the buildings on the property line and could cause a non-compliance with the building code. Mr. Pusey remarked that it is in compliance with the code. Mr. Pusey said that Dennis Spritzer directed him that there has to be fire walls between the buildings. Mr. Pusey stated that he just wants the variance.

Chair Klinker asked Attorney Landwehr if the Board can legally do anything besides denying it. Attorney Landwehr restated that the Board has to make the findings of fact required by the Zoning Board. If the Board makes the findings of fact necessary they can grant it, if not then they can deny it.

Attorney Landwehr referred to 15-14-4(A), special circumstances, that there are special circumstances that are peculiar to land or buildings for which the variance is sought that do not apply generally to land or buildings in the neighborhood. Mr. Pusey said that it is not a land issue but it is the building issue variance he is seeking. There are no storage units in the neighborhood and they don't have that shape and size. Mr. Pusey stated that his project is different. Attorney Landwehr stated that this is a new building therefore there are no special circumstances. The design of the building drives the special circumstance.

Mr. Carl Reinman of Reinman Construction stated that they have worked with Terry Zenger on this project and that there will be a large storm sewer inlet in the alley that will take care of all the water. There is no drainage in that alley at this time.

Chair Klinker referred to a statement from the *American Planning Association*, self storage report, there is less than 1 parking space needed for each 100 storage units. Mr. Pusey stated that the storage unit clients don't stay long, about 17 minutes, and it was a comprehensive report. Mr. Pusey stated that he is trying to make a quality facility.

G. CLOSE PUBLIC HEARING AT 7:50 P.M.

BOARD ACTION

The Board questioned Attorney Landwehr how long after the close of the public hearing does the Board have to make a decision? The action shall be taken in 21 days 15-12-6 (C).

Chair Klinker announced that the Board is considering tabling for 21 days. Chair Klinker addressed Mr. Pusey and said that they realize that he is not asking for the moon this time but everything he is asking for is against the Code. Mr. Pusey stated that the public hearing is closed but the Board is addressing him. **Chair Klinker reopened the public hearing.** Mr. Pusey stated that last time he asked to delete 100% of the landscaping. He recognized that the Board said absolutely not. He restated that he is only asking for a small thing, if you can't go along with 6.7% of drive and accesses then the Board has just shut down any and all variances within the City. He addressed the audience behind him and stated that if they are looking for a variance that they might as well go home if the Board can't vote affirmatively for him now. He also stated that future variances might as well not come in either. Vice Chair Pickett stated that the request is modest but in his perspective at this point to approve or make a motion to approve it and to comply

with the requirements within the Code he can't come up with it right at this moment. He stated that he was thinking about tabling it in order to construct, if there is such a way, to look at it in depth and not make a decision right now.

Moved by: Vice Chair Pickett moved to table the Board action on the request for a maximum of 21 days to be scheduled by the Planning Staff before the final action.
Seconded by: Board member Larson.

Roll call vote yes: Bailey, Klinker, Larson, Pickett, and Hicks.

Roll call vote no: None. Motion carried to table.

IV. DENNIS PATTEN – GUNNISON LATTER DAY SAINTS CHURCH, VA 04-2
A. OPEN PUBLIC HEARING AT 8:00 P.M.

B. PROOF OF PUBLICATION – Provided by Gunnison Country Times.

C. REVIEW OF APPLICATION & STAFF REPORT

Staff member Sonja Baca reviewed the application, VA 04-02, for a variance from the 10% maximum allowable lot coverage for uncovered parking and access in the residential zone district. She then reviewed the Staff report dated April 12, 2004. The request is to accommodate additional parking for the Latter Day Saints church facility expansion. The applicant is requesting to expand the parking spaces from 36 to 58 which will increase the parking from 10% to 26.9%. Dennis Patten is representing the LDS Church. Zoned residential, and is currently occupied by the LDS church as a conditional use in the R1 zone district. The expansion was approved by the Planning and Zoning Commission in September 2003, recorded as exhibit B. The site plan for the project is listed as exhibit A. The calculation is 1 space per 4 seats in sanctuary which equals 42 spaces. The applicant has not provided adequate parking for the handicapped. The existing lot coverage for parking and access is currently above the code requirements.

Staff finds no issues from the City or attorney and no comments from the public have been received.

Based on the staff's observations and the findings which demonstrate the inability of the applicant to meet all of the seven criteria under Required Showing, staff recommends denial of the application.

Chair Klinker thanks staff member Sonja Baca.

D. APPLICANT'S PRESENTATION

Mr. Patten stated that he appreciates the work done by staff. He referred to page 4 of the Staff report, number 12 (E), definition of conditional use, which is a use that is generally compatible. Patten stated that it is unusual to come to a city and get a conditional use and then have to comply with all the requirements in the zone in which that conditional use exists. Generally one doesn't have to comply with every requirement in that R1 zone. In a residential zone there are uses that are beneficial to that zone, schools, churches, etc. that residents want to have around but don't necessarily comply with that zone. Is it really the intent of the zone to make sure that every conditional use within that zone complies with the R1 requirements? He proposed that it is not the intent of the Land Use Code because it says it is generally compatible.

Attorney Landwehr stated the conditional use was approved as generally compatible; schools are difficult to analogize to anything else because the State of Colorado has exempted them to all building and zoning regulations; it is handled on the State level. At the time that the LDS church was considering the expansion parking was directly addressed. At the time parking was adequate for the use but now they want additional

parking. He commented that the Conditional Use ordinance requires all dimensional standards to be met. However, in R1 zoning, the standards are usually for a single family home with a 2 car garage and a driveway. The Conditional Use was approved on the basis that the parking would be adequate for the expanded church.

Mr. Patten stated that the first site plan that was given to Colleen Hannon included the expanded parking but Colleen recommended giving the site plan without the expanded parking to the Planning Commission to speed up the process so that they could build before the winter. The Planning Commission decided how much space a person takes up on a pew and made it work in order to make the parking work. The decision was to be two feet per person so the parking would work out. He wanted to stress the point that it is generally compatible with that zoning. Mr. Patten stated that authorized variances can be given for parking requirements. He stated that the facility will be ready for use in a month in a half and what they are doing is trying to solve the off street parking issues.

Mr. Patten referred to page 3 from the Staff Report, dimensional standards, the coverage for the structures is 40% and the LDS church is at 11.5%. Landscaping is 50% and the LDS church is at 55%, the parking LDS church is asking for is 26.9% and they are already at 17%, so they are already over the 10% allowed by the zone. He pointed out that the building was built before the ordinance was adopted.

He then referred to page 5 in the staff report, the seven items of showing. Item A the main point is that special circumstances do exist because it is not a home, therefore it does not have to comply with every item it just generally complies. Item B, not a result of the applicant, this was because of the recommendation by Colleen. Item C, strict application deprives reasonable use, the LDS church is trying to help the situation by keeping street parking to a minimum. Item D, variance is necessary to provide reasonable use, the use of the building will be used whether the parking is there or not, they are trying to keep parking off of the street. There is a conflict in the Land Use Code, on one hand the Church can only use 10% on the other hand if you use two feet per person 42 stalls are required, if you use 18 inches it would be up to 51 stalls. Item F, not injurious to the neighborhood, the important statement he brought up was given by staff in that it could be a benefit because it keeps the parking off of the street.

Mr. Patten brought up the staff's comments about setting precedence, he thought that this was important because a church is not a home, it is different but it is a use that is desired within a residential area.

Mr. Patten presented his site plan.

Vice Chair Pickett asked if it was the intent that the driveway off Arthur Street was to be moved. Mr. Patten stated that he wanted to bring it a little further away from the corner. He stated that it was a non-conforming access. The intent is to put the concrete, curb, gutter, and asphalt in the way it is supposed to be.

Pickett asked if there is a plan to extend the paving on 12th Street closer to the street right-of-way, but he sees that they are intending to move the driveway 20 feet. They are going to take the parking lot down so that there will be almost 30 feet of landscaping.

Chair Klinker asked if they were going to do landscaping on 12th Street. Mr. Patten stated that they are and they were going to re-do the landscaping around the existing building to improve it.

Vice Chair Pickett asked if there is a requirement to provide off street parking for churches. Staff member Baca stated that the parking standard for church facilities in residential areas is 1 space per 4 seats. Two feet is usually the standard.

Board member Hicks stated that in the minutes from the Planning Commission, Exhibit B, suggested that if they wish to have increased parking in the future that they would have to apply for a variance.

Vice Chair Pickett asked if there was a site plan review on parking. Staff member Baca said there is nothing that states that they can't park on the street.

E. PUBLIC INPUT

Robin Robinson stated that she lives on the corner of 11th Street and Elizabeth Street and she feels that if they do not put in a bigger parking lot there is a potential residential parking problem. She already has a problem with cars parking in front of her house.

Kevin Nelson stated that they already have parking on the street as it is. Every Sunday there will be three or four cars parked on 11th Street. and he is in favor of the parking lot to get the cars off of the street.

Aaron Hedra stated that there needs to be an expanded grass area because it would make it safer for kids to play

F. BOARD DISCUSSION

Board member Bailey stated that over the years there has been a problem with not enough parking. The situation at the present time is that they can park on street but with the church expansion it will require more parking. He commends the applicant for looking into the future and he stated that he is in favor of the variance.

Board member Hicks stated that this is a common sense problem because there is going to be safety problems. She stated that it is good planning and thinking and that anything that can be done to alleviate parking problems on the street is welcomed. Vice Chair Pickett agrees with wanting the cars off of the street but based on the staff report and the seven items of showing he would like to table. Board member Larson stated that there are special circumstances but they only meet one out of the seven requirements so she requires more time to consider. Chair Klinker stated that they do not comply with the seven criteria and the Board has gotten stiff on the criteria. She stated that she is in favor of tabling also.

Board member Hicks asked Vice Chair Pickett what can be gained by postponing it. Pickett stated that to approve or deny based on the findings of fact that he needs more time to construct findings of fact that direct more towards common sense. Board member Hicks asked if they can have a new staff report. Attorney Landwehr stated that yes, staff can make a new report and that Mr. Patten can do a new findings of fact as well.

Mr. Patten stated that he is an independent architect and does a lot of projects. He presented a project of 15,000 feet in Reno, NV. The project is a Conditional Use within a residential zone. The building is 10% of the site, landscaping is 30%, and parking is 60% of the site. If we come back to the Board the zoning ordinance states now that there is 1 stall for every 4 seats. He wanted to know how to handle it, maybe by getting a definition down to the 18 inches then they would be at the 51 stalls. He wanted to know if that would require them to go back to the Board or just go to get a Conditional Use again. Attorney Landwehr stated that they would have to come back to the Board. Staff Baca stated that with the parking standards you can't do it. Board member Larson stated that the Board cannot rewrite the code. The applicant needs to come into compliance with the seven issues and that's where they struggle to make a motion that does not break the law.

Mr. Patten stated that they could cover the stalls and they wouldn't have to come back in. Mr. Patten stated that there is a conflict. Board member Hicks stated that when there is a Conditional Use why we keep referring to the R1 zoning because that is not the intent of the Conditional Use it is to do away with that zoning and make it a Conditional Use. Attorney Landwehr stated that Conditional Uses still have to meet standards. Mr. Patten asked if his facts of finding were in the report. The Board said yes.

G. CLOSE PUBLIC HEARING AT – never officially closed.

H. BOARD ACTION

Moved by: Vice Chair Pickett moved to table request for a maximum of 21 days to be scheduled by the Planning Staff.

Seconded by: Board member Larson.

Roll call vote yes: Klinker, Larson, and Pickett.

Roll call vote no: Bailey and Hicks. Motion carried to table.

V. ADJOURN AT 9:03 P.M.